MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

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LAW DOCKET NUMBER ARO-15-269 (Kevin Carton)
&
LAW DOCKET NUMBER ARO-15-270 (Micah Carton)

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STATE OF MAINE
Appellee

v.

KEVIN CARTON & MICAH CARTON
Appellants

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ON APPEAL FROM THE AROOSTOOK COUNTY SUPERIOR COURT (HOULTON)

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# BRIEF OF THE APPELLANTS

KEVIN CARTON & MICAH CARTON

Attorney for the Appellants

Matthew C. Garascia, Esq.
158 Fifth Street
Auburn, ME 04210
Maine Bar No. 004572

## QUESTIONS PRESENTED FOR REVIEW

I. DID THE SUPERIOR COURT ERR IN DENYING THE APPELLANTS' MOTIONS TO SUPPRESS THE NOVEMBER 26, 2013, WARRANTLESS SEARCH OF THE CAMP, WHEN THE APPELLANTS CLEARLY HAD A REASONABLE EXPECTATION OF PRIVACY IN THE CAMP, BUT WERE DENIED AN OPPORTUNITY TO OBJECT TO THE SEARCH, DESPITE THEIR BEING PRESENT AND AVAILABLE WHEN THE POLICE OFFICER ENTERED?

II. DID THE SUPERIOR COURT ERR IN DENYING THE APPELLANTS' MOTIONS TO SUPPRESS THE NOVEMBER 27, 2013, SEARCH PURSUANT TO THE WARRANT, WHICH RELIED ON INFORMATION OBTAINED FROM TROOPER SYLVIA'S EARLIER UNREASONABLE, WARRANTLESS SEARCH OF THE AMITY CAMP?

III. DID THE SUPERIOR COURT ERR IN DENYING THE APPELLANT'S MOTIONS TO SUPPRESS KEVIN CARTON'S PRE-MIRANDA STATEMENT, WHEN THAT STATEMENT WAS MADE IN RESPONSE TO AN INVESTIGATORY QUESTION NOT JUSTIFIED BY A SUBSTANTIAL THREAT TO PUBLIC SAFETY?

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## STATEMENT OF THE CASE

**Procedural History.** On November 26, 2013, Kevin and Micah Carton (the "Appellants"), were each charged with one count of Unlawful Trafficking in a Scheduled Drug (methamphetamine)(Class B), based on acts alleged to have occurred at a family hunting camp in Amity, Maine. (A. 1, 8). The Appellants were arrested after Trooper Jared Sylvia conducted a warrantless search of the camp. (A. 14). The Appellants each filed three Motions to Suppress: (1) the warrantless search of the camp on November 26, 2013, (2) any statements made by either defendant on November, 26, 2013, and (3) any evidence seized incident to the search of the camp pursuant to a warrant issued on November 27, 2013. (A. 14). On November 26, 2014, the Houlton Superior Court held a testimonial hearing on the Appellants' Motions. (Id.) The Court (Stokes, *J.*) denied the Appellants' Suppression Motions on January 7, 2014. (A. 24). On May 6, 2015, both Appellants entered a conditional guilty pleas, and both were sentenced on May 20, 2015. (A. 4, 11). On May 26, 2015, the Appellants filed notices of Appeal with the Maine Law Court regarding the Superior Court's Decision denying their Motions to Suppress. (A. 6, 13).

**Facts of the Case.** On November 26, 2013, Trooper Jared Sylvia was informed by a co-worker, Lisa Hall, that one of her family members was, possibly, making methamphetamine at a family camp. (Tr. 12). It was alleged that Mrs. Hall's son, Mitchell, called her to report that relatives at the camp were "doing something with a bottle that he believed to be making methamphetamine." (Tr. 14). Trooper Sylvia drove to Amity, near the location of the family camp in question, and was met by Lisa Hall, her husband and owner of the camp, Perry Hall, and Mrs. Hall's brother in law, Billy Jo Hall. (Tr. 13). After a short conversation with the Halls,

Trooper Sylvia left his marked police cruiser, joined the Halls in their civilian pickup truck, and all four proceeded together down the dirt access road leading to the family camp. (Tr. 14). Sylvia did not attempt to obtain a search warrant. During the short drive to the camp, Trooper Sylvia learned that Perry Hall was the owner of the camp, who gave Sylvia permission to enter the camp. (Tr. 33). Trooper Sylvia did not inform the Halls that he planned to search the camp, seize any items, make arrests, or conduct a criminal investigation at the camp. (Tr. 33-34). Trooper Sylvia was informed that the Appellants, who he knew personally, were the parties suspected of making meth. (Tr. 34). He was aware that the Appellants were the Hall's relatives, and had Perry Hall's permission to be at the camp. (Tr. 61-62). The camp is a wood-built structure consisting of an open main room that includes a small cooking area, and a bunk room; the door of the camp opens on the main room. (A. 37) Upon their arrival there, all four parties immediately proceeded into the camp. (40-41). The Halls entered first, and Trooper Sylvia followed behind. (Tr. 38). Upon entering,Trooper Sylvia saw that both Appellants were present in the main room. (Tr. 41). Sylvia proceeded directly into the bunk room without speaking to the Appellants. (A. 42). At some point, one of the Appellants asked "what's up," and Trooper Sylvia stated that he was there with the family "to look around." (Tr. 81). Sylvia did not tell the Appellants what he was looking for, or even that he was investigating a crime; he conceded the he was "intentionally vague" with the Appellants regarding his purpose there. (Tr. 63). Sylvia quickly noticed a clear plastic bottle containing white sludge on the bunk room floor, which he believed to be used in the "one pot" method of methamphetamine production. (Id.) Seeing the "one pot" reaction vessel, Sylvia promptly placed both of the Appellants in handcuffs. (Tr. 43). Trooper Sylvia testified that a usual "one pot" methamphetamine setup would require another

bottle called a "gassing generator," used to create hydrogen chloride gas, along with tubing and tinfoil; Sylvia did not observe a second bottle, tubing, or tinfoil. (Tr. 47-48). Sylvia did not notice any sign of hydrogen chloride gas, which would include a distinctive pungent odor. (Tr. 50). He also stated that he observed no signs that the Appellants were suffering any irritation that would be indicative of exposure to such gas; he believed that this indicated there was no immediate danger from that gas. (Tr. 50). After placing both of the Appellants into handcuffs, but prior to advising them of their Miranda rights, Sylvia asked them the location of the "gassing generator." (A. 22-23). Kevin Carton informed Sylvia that the "gassing generator" had been placed outside of the camp. (Tr. 23). After placing the Appellants under arrest, Sylvia led them out and into the Hall's truck, and all parties returned to Sylvia's cruiser on the main road. (Tr. 53).

Perry Hall testified that the Appellants had an open invitation to use and stay at the camp whenever they wanted to, for any length of time; the Appellants sometimes stayed at the camp for weeks at a time. (Tr. 71). On the day of their arrest at the camp, the Appellants had been there for 10-14 days. (Tr. 72). Mr. Hall did not recall that any of the parties explained to the Appellants why they had come to the camp. (Tr. 77). When Trooper Sylvia entered the bunk room where the Appellants were staying, he did not ask the Appellants' permission to search. (Tr. 78). Mr. Hall testified that the time between Sylvia's entry into the camp and the time Sylvia handcuffed the Appellants passed very quickly, and was perhaps as short as two minutes. (Tr. 78-79).

On November, 27, 2013, Special Agent Erica Pelletier, of the Maine Drug Enforcement Agency, obtained and executed a search warrant for the Amity camp, based on the Warrant

Affidavit that incorporated observations and evidence from Trooper Sylvia's warrantless entry into and search of the camp. Paragraph 4 of the Warrant Affidavit contains supporting facts that were only obtained by Trooper Sylvia's warrantless search of the camp, including that: Sylvia saw Appellant Micah Carton manufacturing methamphetamine in the kitchen; Sylvia located a used reaction vessel for making methamphetamine; Sylvia located a backpack containing items commonly used in the "one pot" method of methamphetamine manufacture. (Warrant Affidavit, ¶ 4). The State conceded that Sylvia's accusation that he saw Micah Carton making methamphetamine is false; the Appellant was cooking food, and this fact was misreported. (A. 22).

## SUMMARY OF THE ARGUMENT

*The November 26, 2013, Warrantless Search.* In this case, the police violated the Appellants' Fourth Amendment rights, by entering the Appellants' dwelling without a search warrant, and without the Appellants' consent. The Appellants undeniably had a reasonable expectation of privacy in the Amity camp, but never consented to its search by Trooper Jared Sylvia. The third-party consent to search given by the camp's owner was not valid and binding on the Appellants, who were present and available in the camp, but who were denied any opportunity to object to the search. Trooper Sylvia arrived at the camp in an unmarked vehicle, entered with a group of the Appellants' family members, did not knock or announce his presence upon entering, did not inform the Appellants that he was conducting a search, and was "intentionally vague" about his purpose to search for evidence of illegal drugs. Trooper Sylvia conducted his search and arrested the Appellants within approximately two minutes of his entry into their dwelling, even before the Appellants were aware a search was being

conducted. Under the Supreme Court's ruling in *Georgia v. Randolph*, Trooper Sylvia's search effectively removed the Appellants from the "threshold conversation" in which they had a right to object to, and prevent, his warrantless search. As the Supreme Court has recognized, "[d]isputed permission is no match for [the] central value of the Fourth Amendment." Therefore, the Superior Court erred in denying the Appellants' Motion to Suppress the warrantless search.

*The November 27, 2013, Search by Warrant.* The evidence obtained from the execution of the MDEA's November 27, 2013, search by warrant should also have been suppressed as "fruit of the poisonous tree." The facts supporting probable cause for the search warrant were derived from observations made during Trooper Sylvia's unreasonable, warrantless search of the Amity camp. Without the facts obtained during the unreasonable warrantless search, the magistrate could not have made a finding of probable cause. Therefore, the Superior Court erred in denying the Appellants' Motion to Dismiss the search by warrant.

*Kevin Carton's Pre-Miranda Statement.* The Superior Court also erred in denying the Appellants' Motion to Suppress Kevin Carton's pre-Miranda statement. Trooper Sylvia violated Kevin Carton's Fifth Amendment rights by placing him under arrest and questioning him before advising him of his Miranda rights regarding the location of the "gassing generator." That interrogation was not justified by any "public safety" exception, because Trooper Sylvia acknowledged that the circumstances did not suggest that any party was at risk from toxic chemicals.

## ARGUMENT

I. THE SUPERIOR COURT ERRED IN DENYING THE APPELLANTS' MOTIONS TO SUPPRESS THE NOVEMBER 26, 2013, WARRANTLESS SEARCH OF THE CAMP, WHEN THE APPELLANTS CLEARLY HAD A REASONABLE EXPECTATION OF PRIVACY IN THE CAMP, BUT WERE DENIED AN OPPORTUNITY TO OBJECT TO THE SEARCH, DESPITE THEIR BEING PRESENT AND AVAILABLE WHEN THE POLICE OFFICER ENTERED.

### A. The Superior Court erred in finding that the Appellants inferior possessory rights in the camp did not entitle them to an enforceable privacy interest there.

1. Under *Minnesota v. Olson*, the Appellants' status as long-term guests at the camp clearly entitled them to a legitimate and enforceable privacy interest while they resided at the camp.

An individual's capacity to claim the protection of the Fourth Amendment depends upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the place that is subject to intrusion or invasion. *Rakas v. Illinois*, 439 U.S. 128, 143 (1978). A subjective expectation of privacy is legitimate if it is one that society is prepared to recognize as "reasonable." *Id.*, at 143-144. Under the Fourth Amendment, an overnight guest has a reasonable expectation of privacy in his host's dwelling, such that he may refuse to consent to a warrantless search by police. *Minnesota v. Olson*, 495 U. S. 91, 93 (1990). The protections contained in the Fourth Amendment encompass society's customary expectation that "hosts will more likely than not respect the privacy interests of their guests, who are entitled to a legitimate expectation of privacy *despite the fact that they have no legal interest in the premises and do not have the legal authority to determine who may or may not enter* the household." *Id.*, at 99. (emphasis added).

In *Olson*, the police executed a warrantless, nonconsensual search of a dwelling in which a bank robbery suspect was an overnight houseguest. *Id.*, at 94-95. There, the Supreme Court found that the defendant's status as houseguest gave him a sufficient privacy interest in his host's dwelling that the warrantless search of the dwelling and the defendant's subsequent arrest constituted Fourth Amendment violations. *Id.*, 95-96. Consequently, the defendant's arrest was overturned and his statements following arrest were suppressed as fruit of the poisonous tree. *Id.*

In its Decision on the Motion to Suppress the November 26, 2013 warrantless search of the cabin, the Superior Court effectively held that the Appellants had no reasonable expectation of privacy in the family camp owned by Mr. Hall. (A. 18). The Court concluded that Perry Hall's consent to the warrantless search would have prevailed, even over an objection by the Appellants, because Hall had a "superior possessory relationship to the [camp][.]" (Id.)

However, like the defendant in *Olson*, here, the Appellants' status as long-term guests entitled them to a reasonable expectation of privacy in the camp, such that Trooper Sylvia's warrantless search, without their consent, was invalid under the Fourth Amendment. As the Court held in *Olson*, and contrary to the Superior Court's conclusion here, the Appellants' rights to privacy in the camp was enforceable even though the Appellants had inferior possessory interests in, and no property interests in, the camp. Therefore, as in *Olson*, all evidence and statements flowing from Trooper Sylvia's warrantless search of the cabin should have been suppressed.

2. <u>The Superior Court erred in concluding that the Appellants, having inferior possessory rights in the camp, could not have prevailed on an objection to the warrantless search, over Mr. Hall's third-party consent.</u>

In its Decision on the Motions to Suppress, the Superior Court erroneously concluded that a superior possessory interest holder's consent to search prevails over an objection to search by a physically present co-inhabitant. (A. 18). The Court reasoned that because the Appellants were Mr. Hall's houseguests, and had no right of exclusive possession of the camp as to him, "Mr. Hall's consent was [therefore] valid and sufficient to grant Trooper Sylvia permission to enter the camp and look around, regardless of whether either defendant objected." (Id.) In support of this premise, the Superior Court cited this Court's decisions in *State v. Grandmaison* and *State v. Thibodeau. State v. Grandmaison*, 327 A.2d 868, at 870 (1974); *State v. Thibodeau*, 317 A.2d 172, 178 (Me. 1974).

However, those cases did not hold that a superior possessory interest holder's consent to a warrantless search *overrides* an objection to a search by a physically present co-occupant having lessor possessory interests. Neither of those cases dealt with a co-occupant who was physically present and objecting at the time the third-party gave the police consent to search. Rather, in each of those cases, the Law Court found that a lessee's possessory interest in their apartments gave them sufficient "common authority" over their dwellings such that their consent to a warrantless search validly bind their *absent or unavailable* houseguests. *Grandmaison*, 327 A.2d, at 870; *Thibodeau*, 317 A.2d 172, 178. Those cases merely adopted the "common consent-to-search" rule that the Supreme Court articulated in *U.S. v. Matlock*, which also concerned co-occupants who were not available to object when the third-party's consent to search was given. *U.S. v. Matlock*, 415 U.S. 164 (1974).

In this case, however, unlike *Grandmaison, Thibodeau, Matlock*, the Appellants *were* both *physically present* and *available* at the threshold when Trooper Sylvia entered the camp to

conduct his search. If Trooper Sylvia had asked the Appellants if they would consent to a search of their dwelling, or even if he had not been "intentionally vague" about his purpose in the camp when he was asked, the Appellants would have objected to the search. Moreover, precedent establishes that the Appellants could have prevailed in an objection over Mr. Hall's consent, if they had been reasonably informed that a criminal search was being conducted.

In *U.S. v. Johnson*, the Sixth Circuit held, following the reasoning of *Georgia v. Randolph* and *Olson*, that an objection to a warrantless search by a co-inhabitant cannot be overridden by the consent of a third-party having superior possessory interests in the dwelling, absent some recognized hierarchical relationship among the co-occupants. *U.S. v. Johnson*, 656 F.3d 375, 378-379 (6th Cir. 2011). In *Johnson*, it was held that a homeowner's consent to a warrantless search of her home could not override her adult son's objection to the search, even though she had a clearly superior possessory interest in the property. *Id.*

The Sixth Circuit's holding in *U.S. v. Johnson*, is highly relevant to the resolution of this case. Like the property owner's superior possessory interest in *Johnson*, which did not entitle her to prevail over a co-inhabitant's objection to a warrantless search, here Mr. Hall's property interest in the camp did not entitle him to consent to Trooper Sylvia's warrantless search over an objection by the Appellants, even though they had inferior possessory rights in the camp. *Johnson* establishes, contrary to the Superior Court's conclusion, that the Appellants would have been able to prevent Trooper Sylvia's warrantless search, if he had informed them that he was conducting one. Instead, Sylvia was intentionally vague, thereby preventing the Appellants' likely objections to the warrantless search.

Because the Superior Court erred in finding that the Appellants had no reasonable expectation of privacy in the camp, and that the Appellants had no grounds to object to Mr. Hall's third-party consent to Sylvia's search, the Court's decision should be reversed, and the Appellants' Motion to Suppress the Warrantless Search should be granted.

**B. Trooper Sylvia's failure to disclose to the Appellants he was conducting a search, and to request the Appellants' consent to the search, unlawfully denied them an opportunity to object, despite their presence and availability when Trooper Sylvia entered.**

The Fourth Amendment ordinarily demands that the police obtain a written warrant before they can execute a search of one's home or dwelling. *Payton v. New York*, 445 U.S. 573, 586 (1980). For, as the Supreme Court has recognized, the warrant requirement is the "bulwark of Fourth Amendment protection." *Franks v. Delaware*, 438 U.S. 154, 164 (1978). A search authorized by the voluntary consent of an individual having a possessory control over a dwelling, is one "jealously and carefully drawn" exception to the otherwise strict warrant requirement. *Jones v. U.S.*, 357 U.S. 443, 454-455 (1971); *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990).

When multiple occupants share a dwelling, consent to a warrantless search by any one of the residents with common authority over the premises may be valid and binding as against other residents who are absent or unavailable when the consent is given (the "common consent-to-search rule"). *U.S. v. Matlock*, 415 U.S. 164 (1974); *Rodriguez*, 497 U.S. 177. However, a physically present co-occupant's stated objection to a warrantless search of his dwelling overrides and renders invalid any consents offered by his fellow co-occupants. *Georgia v. Randolph*, 547 U.S. 103, 106 (2006). Accordingly, a search will be considered unreasonable if

there is evidence that the police removed a potentially-objecting defendant from the entrance of a dwelling with the purpose of preventing his objection to their request to search. *Randolph*, 547 U.S., at 121; *Fernandez v. California*, 134 S. Ct. 1126, 1134-1135 (2014).

For example, in *Matlock*, a defendant was arrested outside his residence and detained in a nearby police car while the police sought consent to search his residence, not from the defendant, but from one of his housemates. *Matlock*, 415 U.S., at 166. There, the Court held that the search of the house was valid and binding as to the defendant, because the consenting housemate had common use and control of the residence. *Id.* at 171. Thus, in the absence of the defendant to object to the warrantless search, his co-occupant's common consent was sufficient to render the search valid and binding. *Id.*

In *Rodriguez*, a warrantless search of an apartment was upheld on the consent of the defendant's ostensible roommate, who brought the police to the defendant's door, permitted them entry, and reported that the defendant was asleep inside. *Rodriguez*, 497 U.S. 179-180. There, the police did not encounter the defendant upon entering the apartment, but discovered him asleep in his bedroom as their search progressed. *Id.*

In contrast, in *Randolph*, a defendant's objection to a police request to search his dwelling was sufficient to render the search invalid as to him, even though his co-tenant consented to the search. *Randolph*, 547 U.S., at 107. There, the Court held that the co-tenant's consent to search could not override the privacy rights of the defendant, who was physically present at the threshold and who affirmatively objected to the police's request to search his residence. *Id.* In *Randolph*, the Court cautioned that police were not permitted to remove a potentially objecting tenant from the entrance for the sake of avoiding a possible objection. *Id.*,

at 121. Accordingly, in *Fernandez*, the Court held that the removal of a potentially objecting co-occupant is not unreasonable, if the removal is for an objectively lawful purpose. *Fernandez*, 134 S. Ct., at 1134. In that case, the Court upheld a warrantless search occurring after the arrest and removal of a co-tenant who was suspected of domestic violence. *Id.*

None of those cases can validate Trooper Sylvia's warrantless search of the camp without the Appellants' consent in this matter. While those cases do not require police to engage in the time consuming burden of searching out all potentially objecting co-tenants prior to conducting a search, none of the cases suggest that police may act to *avoid* hearing an objection from co-tenants who are physically present when the police enter to request consent to search. Rather, the Supreme Court's holdings in *Randolph* and *Fernandez* persuade that Trooper Sylvia unreasonably conducted his search of the camp in order to to avoid giving the Appellants an opportunity to object and withhold their consent.

Unlike the circumstances in *Rodriguez*, where it would have been burdensome and time consuming for the police to search out a sleeping co-tenant to ensure he didn't object to their investigation, here, Trooper Sylvia could have easily and quickly discerned whether the Appellants would consent to a search of camp; both Appellants were immediately present upon Sylvia's entry. Sylvia passed by the Appellants on his way to search their bedroom, without asking for their consent to search, and without even disclosing that he was conducting a search. Because Trooper Sylvia would not have been burdened to ask the Appellants' consent prior to conducting his search, his warrantless investigation of the camp was, therefore, unreasonable under the Fourth Amendment. For as the Supreme Court observed in *Randolph*, "[d]isputed

permission is no match for this central value of the Fourth Amendment." *Randolph*, 547 U.S., at 114.

Moreover, Trooper Sylvia conducted his search in a manner contrary to the Supreme Court's opinions in *Randolph* and *Fernandez*. In those cases the Court held that a physically present co-tenant's objection to a warrantless search can defeat a third-party's consent to a search of the dwelling. *Randolph*, 547 U.S., at 107. Given the right of an objecting co-tenant to prevent a search, the Court instructed that the police may not remove a potentially objecting co-tenant from the entryway in order to prevent an objection. *Id.*, at 121. The Court recognized that removal of a potentially-objecting co-tenant would effectively obliterate that tenant's ability to exercise his Fourth Amendment right to refuse a warrantless search. The Court's opinions recognize that if a co-tenant has a *right* to object to a search under the Fourth Amendment, he should actually *have an opportunity* to object to the search.

Here, however, Trooper Sylvia conducted his search in a manner that denied the Appellants any opportunity to object, thereby effectively removing them from the entryway of the camp in violation of the Court's instruction in *Randolph*. Trooper Sylvia arrived to the camp in a vehicle owned by the Appellants' family members, not a marked police car; he proceeded into the camp without requesting the Appellants' consent to a search, and without even disclosing that he was there to conduct a search; he passed by the Appellants without speaking to them, and immediately proceeded to search their bedroom; when the Appellants asked what was happening, Sylvia was "intentionally vague" about his purposes in order to avoid alerting the Appellants to the fact he was conducting a search for evidence of drugs, which would have drawn their objection; and he recovered evidence and began placing the Appellants under

arrest before they were even aware their dwelling had been searched. All of this happened within about two minutes.

These circumstances establish that Trooper Sylvia's search took the Appellants by surprise, and was carried out in a manner that prevented them from exercising their Fourth Amendment rights - perhaps intentionally. If the police can defeat a physically present co-tenant's potential objection to a warrantless search by effectively "racing to recover" evidence before an objection can be voiced, and by capitalizing on a suspect's lack of awareness that a search is being conducted, the Fourth Amendment protections guaranteed by *Randolph* would be totally undermined.

Under these circumstances, the Superior Court erred in finding that Trooper Sylvia's search was reasonable under the Fourth Amendment. The Court's Decision should be reversed, and the Novermber 26, 2013, warrantless search of the camp, and all evidence flowing from it, should be suppressed.

## II. THE COURT ERRED IN DENYING THE APPELLANTS' MOTIONS TO SUPPRESS THE NOVEMBER 27, 2013, SEARCH PURSUANT TO THE WARRANT, WHICH RELIED ON INFORMATION OBTAINED FROM TROOPER SYLVIA'S UNREASONABLE, WARRANTLESS SEARCH.

The exclusionary rule applies to evidence obtained as the direct result of an illegal search and seizure, as well as to evidence later discovered and found to be derivative of an illegality. *State v. Johndro,* 2013 ME 106, ¶ 21, 82 A.3d 820 (citing *Segura v. United States*, 468 U.S. 796, 804 (1984). Illegally seized evidence need not be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is so attenuated as to dissipate the taint. *Id.* (citing *Segura*, 468 U.S. at 805). However, any evidence obtained through

the exploitation of police illegality must be excluded as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963).

For example, in *Johndro*, a warrant permitting police to search the defendant's home was based heavily on information gained during an earlier illegal search of the defendant's home. *Johndro,* 2013 ME 106, ¶ 22. There, the Court found that had the officers not been illegally present inside the defendant's home while executing a previous, illegal search, they would not have observed items later found to match the description of stolen property. *Id.* Consequently, because the warrant exploited information obtained from an earlier illegal search, the evidence seized pursuant to that warrant had to be suppressed. *Id.*

Here, as in *Johndro*, the evidence obtained from the execution of the MDEA's November 27, 2013, search warrant should be suppressed as "fruit of the poisonous tree," because that evidence was derived from observations made during Trooper Sylvia's warrantless search of the Amity camp, which denied the Appellants an opportunity to object to the search. During the nonconsensual search of the Amity camp, Trooper Sylvia made observations of alleged drug paraphernalia, and elicited inculpatory statements from the Appellants, which were incorporated as paragraphs 4-6 of the Warrant Affidavit. Without the illegally obtained observations and statements, all that remained in the Warrant Affidavit is the suspicion raised by Mitchell Hall that the Appellants "were doing something with a bottle," which he believed to be manufacturing methamphetamine. That mere allegation was insufficient to support a finding of probable cause. Therefore, here, as in *Johndro*, the evidence obtained from the November 27, 2013 search by warrant should have been suppressed as "fruit of the poisonous tree."

III. THE COURT ERRED IN DENYING THE APPELLANT'S MOTIONS TO SUPPRESS KEVIN CARTON'S PRE-MIRANDA STATEMENT, WHEN IT WAS MADE IN RESPONSE TO AN INVESTIGATORY QUESTION NOT JUSTIFIED BY A SUBSTANTIAL THREAT TO PUBLIC SAFETY.

In *Miranda v. Arizona*, the Supreme Court held that interrogation in certain custodial circumstances is presumptively, because inherently, coercive and held that statements made under those circumstances are inadmissible unless the suspect is specifically informed of his Miranda rights, but freely decides to forgo those rights. *New York v. Quarles*, 467 U.S. 649, 655. Whether a suspect is in police custody for the purposes of the Miranda protections depends upon whether there is a formal arrest or restraint on the suspect's freedom of movement to the degree associated with a formal arrest. *California v. Beheler*, 463 U. S. 1121, 1125 (1983); *Oregon v. Mathiason*, 429 U. S. 492, 495 (1977).

For example, in *New York v. Quarles*, the Supreme Court recognized a public safety exception to the Miranda warning. *Quarles*, 467 U.S., at 655-656. There, the Court found that a defendant's pre-Miranda response to an officer disclosing the location of his handgun, which the police reasonably believed to have been discarded in a grocery store, was admissible in evidence because the statement furthered public safety by allowing discovery and safekeeping of the loaded weapon. *Id.*

In contrast, the circumstances of Trooper Sylvia's search do not indicate that he perceived a genuine threat to public safety when he asked Appellant Kevin Carton the location of a suspected "gassing generator." Here, Sylvia entered the camp without protective gear, and permitted three others to accompany him into the camp, also without protective gear. Upon entry, Sylvia acknowledged that he noted no signs that a gassing generator was in use. There

was no pungent odor, or irritation to his eyes or airways, and he noted that the Appellants did not appear to be suffering any indications of adverse effects from exposure to toxic gas. Sylvia never asked any of the parties who accompanied him to exit the camp to avoid toxic exposure. When Sylvia discovered what he believed to be the "one pot" reaction vessel, he did not note the presence of tubing or other apparatus required to connect a gassing generator in an active manufacture process. Therefore, although Trooper Sylvia saw what he believed were components for the manufacture of methamphetamine, there was no reasonable basis for his belief that methamphetamine was being actively manufactured at the time he questioned Appellant Kevin Carton. In fact, Sylvia acknowledged that he believed the circumstances indicated that there was no immediate danger from any gas byproducts when he questioned Kevin Carton. (Tr. 50).

In support of its conclusion that Kevin Carton's pre-Miranda statement was justified by a public safety requirement, the Superior Court relied on *State v. Bilynsky*. *State v. Bilynsky*, 2007 ME 107, ¶ 30, 392 A.2d 1169. However, the facts of this facts of this case are substantially distinguished from the facts of *Bilynsky*. First, *Bilynsky* did not recognize a public safety exception to the Miranda protections. Rather, *Bilynsky* recognized a public safety exception to the search warrant requirement permitting a "protective sweep" of a property, when an agent was concerned that manufacture of methamphetamine posed an urgent risk to public safety. *Id*. Second, the public safety exception in *Bilynsky* was exercised when several investigators had a genuine concern that methamphetamine, and its toxic byproducts, were under active manufacture. *Id*. Here, however, Trooper Sylvia acknowledged that there were no indicators

that there was any danger from exposure to toxic gas when he asked Kevin Carton the location of the "gassing generator."

Because Trooper Sylvia's question was not reasonably related to protecting the safety of himself or those at the camp, Kevin Carton's pre-Miranda statement should have been suppressed.

**REQUEST FOR RELIEF**

For all the reasons set forth herein, the Appellants, Kevin Carton and Micah Carton, respectfully request this Honorable Court to reverse the Houlton Superior Court's January 7, 2015, Decision on Motions to Suppress.

DATED: 11 / 23 / 2015

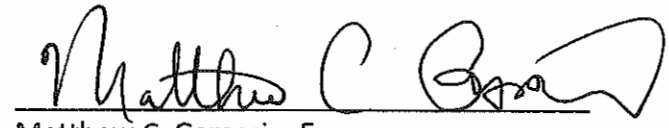
Matthew C. Garascia, Esq.
Attorney for the Appellants
158 Fifth Street
Auburn, ME 04210
Maine Bar No. 004572

**CERTIFICATE OF SERVICE**

I, Matthew C. Garascia, Attorney for the Appellants, Kevin Carton and Micah Carton, hereby certify that I have caused two copies of this Brief of the Appellants to be served upon the following attorney of record for the State via United States Mail, postage prepaid, addressed to the following:

Kurt A. Kafferlin, Esq.
Assistant District Attorney
Aroostook County District Attorney's Office
26 Court Street, Suite 101
Houlton, Maine 04730

Dated this 23rd day of November, 2015.



Matthew C. Garascia, Esq.
Attorney for the Appellant Father
158 Fifth Street
Auburn, ME 04210
Maine Bar No. 004572